IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 386 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

@

STATE OF GUJARAT

Versus

MAFATLAL HARGOVANDAS RAJGOR

Appearance:

1. Special Civil Application No. 386 of 2001

MR HD DAVE ASSTT GOVT PLEADER for Petitioner No. 1

MR PH PATHAK for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 07/03/2002

ORAL JUDGEMENT

#. Heard Mr.H.D.Dave, learned AGP for petitioner State of Gujarat and Mr.P.H.Pathak, learned advocate for respondent workman.

#. RULE. Mr.P.H.Pathak, learned advocate waives formal

service of notice on behalf of the respondent workman. Today, when the matter is called, with the consent of the learned advocates for the parties, this matter is taken up for final hearing.

#. In the present petition, the petitioner - State of Gujarat has challenged the award passed by the Labour Court, Kalol in Reference No.204 / 1989 dated 12th January, 2000, wherein the labour court has set aside the termination order and granted reinstatement with continuity of service and with full backwages with effect from 17th April, 1997. Learned AGP Mr.H.D.Dave on behalf of the petitioner has submitted that the respondent workman has not proved before the labour court that he has completed 240 days continuous service within period of twelve months from the date of termination. Mr.Dave, learned AGP has also submitted that the respondent workman was working as Dailywager employee with the petitioner even though the labour court has come to the conclusion that the respondent workman was working as permanent employee and not as daily wager. Therefore, he submits that the labour court has passed the award beyond the terms of the Reference and no such dispute referred by the concerned authority to the labour court which required to be adjudicated. Mr.Dave, learned AGP also submitted that it is the duty of the workman / employee to prove on record that the workman has completed continuous service of 240 days before the labour court but in the instant case, the concerned workman has merely led the oral evidence in the form of his deposition on oath before the labour court, which has been accepted by the labour court. Therefore, in absence of the evidence from the employee, the labour court should not have passed the award granting relief of reinstatement with continuity of service and full backwages with effect from 17th April, 1997. Therefore, the labour court has committed gross error in granting reinstatement based on the conclusion that provision of Section 25-F of the I.D. Act, 1947 has been violated. The labour court has committed gross error in coming to the conclusion that the respondent workman was working with the petitioner for more than 10 years. However, there was no evidence to that effect produced by the concerned employee before the labour court. Therefore, there is basic error committed by the labour court which required to be interfered with by this Court while exercising the powers under Article 226 and 227 of the Constitution.

#. Learned advocate Mr.P.H.Pathak on behalf of the respondent workman has submitted that it is undisputed fact between the parties that no appointment order was

issued to the respondent workman and therefore, the respondent workman was not able to produce on record any such appointment order. Not only this, no written termination order was issued against the respondent workman and therefore also, the workman was not able to produce any termination order before the labour court. Learned advocate Mr.P.H.Pathak has also submitted that no document has been given to the respondent workman about his presence, pay slip or any other document like identity card to justify that he was working with the petitioner from such date and continued in service till date of termination. Therefore, Mr.Pathak, learned advocate submits that once the respondent workman is not having any document save and except he had actually worked with the petitioner. In such situation, when the workman deposed before the labour court that he has worked for in all for 10 years period continuously as daily wager employee, then, his oral evidence is required to be believed in absence of any evidence produced by the petitioner. Mr.Pathak, learned advocate has submitted that the petitioner has examined one witness before the labour court but said witness was not aware of any background in respect of the respondent workman. It is also pointed out by Mr.Pathak, learned advocate that said witness was not aware of the fact as to whether service of the respondent workman was terminated prior to 1988 and as such, no detail has been given by the said witness. Not only that, no documents were produced by the said witness on record. It is pointed out that payment was made by voucher. This fact has been narrated in written statement but Vouchers were not produced by the deponent before the labour court. Therefore, Mr.Pathak, learned advocate has submitted that when there is no rebuttal evidence against the evidence of the respondent, then the labour court should have to believe the oral evidence of the respondent workman and to pass appropriate orders in accordance with law. Therefore, the labour court has not committed any error while granting reinstatement to the respondent workman. However, it is also submitted that on the contrary the labour court has committed error while not granting full backwages from the date of termination but the respondent workman has not challenged the award. Mr.Pathak, learned advocate has also submitted that from the date of deposition, the labour court has granted full backwages with effect from 17th April, 1997 and therefore, the labour court has taken due care while passing the award by not awarding any backwages to the respondent workman when he remained silent and not given any deposition before the labour court. Therefore, the labour court has applied its mind and passed appropriate order and

therefore, no error has been committed by the labour court which requires any interference by this Court.

#. I have considered submissions of the learned advocates for the parties. It is come out on record that except oral evidence of the respondent workman that he has completed more than 10 years of continuous service, there was no written document produced by either side even by the respondent workman or the petitioner. Both the parties have led oral evidence but the petitioner who has led oral evidence, admittedly, was not able to produce any document to rebut the evidence of the respondent workman. The payment was made by the petitioner to the respondent workman through Voucher and though this fact has been specifically narrated in the written statement, even though, no voucher has been produced before the labour court. Not a single document has been produced about presence register and / or any other document which could rebut the oral evidence of the respondent workman. Even seniority list has not been produced by the petitioner. Therefore, in such situation, when the respondent workman has deposed before the labour court that he was working with the petitioner for more than 10 years continuously and completed 240 days continuous service at the time of termination, no notice nor any retrenchment notice, or no notice pay or no retrenchment compensation has been paid by the petitioner to the respondent workman and therefore, it transpires that provisions of Section 25-F have been violated by the petitioner in case of the respondent workman. In such situation, when there is no other documentary evidence, the labour court had no other option but to accept and believe the oral evidence led by the concerned respondent workman. In similar situation, the Apex Court has considered this aspect in case of M/S. TANNERY AND FOOTWEAR CORPORATION OF INDIA VS. RAJ KUMAR AND ANOTHER reported in 2002 AIR SCW 44. The relevant observations in para-3 are relevant and same are quoted as under :-

"3. Learned counsel for the appellant submitted that the burden of proof lay upon the respondent to establish that he was in the employment of the appellant and had worked for a period of 240 days in a year before termination of his services and no such material was made available. It is clear that neither the respondent produced any material in support of his case, nor to rebut the claim made by him any material was produced by the appellant. It is in these circumstances that the labour court came to

> the conclusion that on appreciation of the material on record such as Exhibit E-1 [Appointment letter] and Exh.E-4 [the order of termination that the services of the respondent are not required from 20-7-1976] that the respondent had worked with the appellant for 240 days in a year. If that was the material on which the labour court placed reliance as no other material was placed by the appellant in rebuttal of the same, we think that the view taken by the labour court is in order. Therefore, the High Court was justified in not interfering with the award made by the Labour Court."

#. In view of this factual aspect and considering the fact that oral evidence was led by the respondent workman that he has completed more than 10 years and at the time of termination, Section 25-F of the Act, has been violated as he had already completed 240 days continuous service within 12 months from the date of termination but against that, there was no rebuttal evidence produced by the petitioner except one witness who was not aware anything in respect of the service condition of the respondent workman. No document was produced by the petitioner to show that the respondent workman has not completed 10 years and he has not completed 240 days continuous service within 12 months prior to the date of termination. In absence of such documentary evidence, which was not at all produced by the petitioner, the labour court has believed and relied on the oral evidence of the respondent workman and passed award. Therefore, according to my opinion, once the material which supposed in the possession of the petitioner institution, was required to be produced by the petitioner and when no such record is produced to rebut the oral evidence of the respondent workman, then, in such circumstances, it seems that the labour court has taken correct view as there was no option with the labour court except to pass the award. Simultaneously, the labour court has taken care while not granting the full backwages from the date of termination but granted the backwages from the date of deposition i.e. 17th April, 1997. Therefore also, it seems that the labor court has applied its mind and as such, no error of jurisdiction nor of any procedural irregularity committed by the labour court and hence, no interference of this Court is called for while exercising the powers under Article 226 and 227 of the Constitution. However, it is made clear that the respondent workman was appointed as Dailywager and not as permanent employee.

However, the observations made by the labour court that there seems the workman has worked against the permanent post, is not correct, nor it was the case of the respondent workman even before the labour court.

In view of above discussion and clarification made by this Court above, present petition deserves to be dismissed and the same is dismissed accordingly.

#. Learned advocate Mr.P.H.Pathak on behalf of the respondent workman has submitted that the award has been passed by the labour court on 12th January, 2000 but till date, the award in question has not been implemented in favour of the respondent workman and therefore, some suitable directions require to be issued on the petitioner so that the respondent workman can be reinstated in service within some reasonable time. Therefore, considering the request and the fact that this Court has upheld the award impugned in this petition except some clarification, it is directed to the petitioner to reinstate the respondent workman in service as per the award within period of two months from the date of receiving the copy of this order. It is further directed to the petitioner to pay full backwages to the respondent workman with effect from 12th January, 2000 till actual date of reinstatement within period of three months from the date of receiving the copy of this order. The petitioner is also further directed to pay the backwages as awarded by the labour court within period of four weeks from the date of receiving the copy of this order.

#. Lastly, Mr.Pathak, learned advocate submits that at the time of issuing notice by this Court on 17th January, 2001, directed the petitioner to deposit the amount of Rs.2000/- by way of cost. Therefore, he request that since said amount is already deposited before the Registry of this Court, same should be awarded by the respondent workman. Therefore, considering request of Mr.Pathak, learned advocate, the Registry of this Court is directed to pay the amount of Rs.2000/- to the respondent workman by way of account payee cheque drawn in favour of the respondent workman, on being identified by learned advocate Mr.P.H.Pathak.

Rule discharged. Ad-interim relief, if any, stands vacated. No order as to costs. Direct Service to

respondent is permitted.

Date : 7-3-2002 [H.K.Rathod, J.]

#kailash#